

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**D.L., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Binghamton, NY, Employer**

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**Docket No. 16-0361  
Issued: May 3, 2016**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On December 21, 2015 appellant filed a timely appeal from an October 15, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed between the last merit decision of OWCP dated December 23, 2014, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.

**ISSUE**

The issue is whether OWCP properly denied appellant's request for further merit review of his claim pursuant to 5 U.S.C. § 8128(a).

On appeal appellant contends that he sustained a work-related foot condition and submitted additional medical evidence.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, in addition to the evidence appellant submitted on appeal, he also submitted new evidence following the issuance of the October 15, 2015 OWCP decision. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1). Therefore, this additional evidence cannot be reviewed by the Board.

### **FACTUAL HISTORY**

On September 17, 2014 appellant, then a 53-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that on June 12, 2013 he first became aware of his plantar fasciitis and realized that his condition was caused or aggravated by delivering mail over a period of time.

By letter dated October 1, 2014, OWCP notified appellant about the deficiencies of his claim and afforded him 30 days to submit additional evidence. It also requested that the employing establishment submit medical evidence, if appellant had been treated at its medical facility.

In medical reports dated June 12 and July 15, 2013 and March 11 and September 16, 2014, Dr. Parker M. Gennett, an attending podiatrist, provided findings on physical and x-ray examination and diagnosed plantar fasciitis/iosis, bilateral synovitis "TPT," and bilateral medial calcaneal nerve (MCN) entrapment. In an October 2, 2014 duty status report (Form CA-17), he diagnosed left foot plantar fasciitis, nerve entrapment, and synovitis. Dr. Gennett noted that appellant's diagnosed conditions were due to walking while delivering mail. He advised that appellant was able to perform regular full-time work.

In an October 10, 2014 statement, appellant attributed his claimed injury to delivering mail on hard and soft (grassy) surfaces and going up and down stairs continually eight hours a day for 26 years.

In a December 19, 2014 decision, OWCP denied appellant's claim. It found that the medical evidence was insufficient to establish that he sustained an injury and/or medical condition causally related to the accepted work event(s). OWCP reissued the December 19, 2014 decision on December 23, 2014.

On July 13, 2015 appellant requested reconsideration. He resubmitted Dr. Gennett's June 12 and July 15, 2013 and March 11, September 16, and October 2, 2014 reports.

In a July 22, 2013 Family and Medical Leave Act (FMLA) form, Dr. Gennett indicated that since June 6, 2000 appellant had ongoing bilateral foot pain due to plantar fasciitis and tarsal tunnel for which he received injections. In reports dated January 15 and 27 and April 28, 2015, he noted that appellant presented for examination following recent foot surgery. Dr. Gennett provided examination findings, reviewed x-ray results, and assessed appellant as being status post correction left endoscopic plantar fasciotomy. Appellant had right plantar fasciitis and right MCN. In a January 12, 2015 report, Dr. Gennett described appellant's bilateral foot surgery. In a March 10, 2015 note, he released him to return to work with no restrictions.

By decision dated October 15, 2015, OWCP denied further merit review of appellant's claim. It found that the evidence submitted was repetitious, irrelevant, and immaterial.

### **LEGAL PRECEDENT**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on

application by a claimant.<sup>3</sup> Section 10.608(a) of OWCP's regulations provide that a timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence and/or argument that meet at least one of the standards described in section 10.606(b)(3).<sup>4</sup> This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>5</sup> Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.<sup>6</sup>

### ANALYSIS

The Board finds that OWCP properly refused to reopen appellant's case for further reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

In support of his July 13, 2015 request for reconsideration, appellant neither demonstrated that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by OWCP. He submitted Dr. Gennett's FMLA form, reports, and notes dated July 22, 2013 to March 10, 2015. The notes document that appellant was status post correction left endoscopic plantar fasciotomy, he had right plantar fasciitis and right MCN, and evinced that he could return to work with no restrictions as of March 10, 2015. This evidence, while new, is irrelevant to the issue of whether appellant sustained a foot condition causally related to the accepted employment factors. Dr. Gennett did not attribute appellant's diagnosed conditions and surgery to the accepted employment factors. The submission of evidence or argument that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>7</sup>

Appellant resubmitted Dr. Gennett's June 12 and July 15, 2013 and March 11, September 16, and October 2, 2014 reports. However, these reports are insufficient to justify a merit review of the claim as they are duplicative of evidence previously considered by OWCP. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review.<sup>8</sup> The Board finds, therefore, that these reports are insufficient to reopen appellant's claim for a merit review.<sup>9</sup>

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<sup>3</sup> 5 U.S.C. § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.608(a).

<sup>5</sup> *Id.* at § 10.606(b)(3).

<sup>6</sup> *Id.* at § 10.608(b).

<sup>7</sup> *R.M.*, 59 ECAB 690 (2008); *Betty A. Butler*, 56 ECAB 545 (2005).

<sup>8</sup> *Denis M. Dupor*, 51 ECB 482 (2000).

<sup>9</sup> *See K.K.*, 59 ECAB 141 (2007).

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal appellant argues the merits of his claim. The Board noted above that it only has jurisdiction over OWCP's October 15, 2015 nonmerit decision which denied his request for reconsideration and, therefore, is precluded from conducting a merit review.

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for further merit review of his claim pursuant to 5 U.S.C. § 8128(a).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the October 15, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 3, 2016  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board